



STATE BAR of  
WISCONSIN

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## MEMORANDUM

**To:** Senate Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform, and Housing

**From:** Douglas W. Kammer, President  
State Bar of Wisconsin

**Date:** August 18, 2009

**Re:** State Bar of Wisconsin Support for Senate Bill 127 – State notification in medical malpractice cases

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The State Bar of Wisconsin supports Senate Bill 127, which removes the requirement that a person injured by medical malpractice involving a state officer, employee, or agent serve notice of claim with the Attorney General within 180 days of the injury. As the bill provides, persons so injured should be allowed to commence that action within the same time period that is required when a claim is against a private health care provider. The bill would effectively apply the same 3-year statute of limitations for medical malpractice cases for privately run health systems to state officers and other governmental bodies.

The State Bar of Wisconsin does not have a position on the balance of SB 127 relating to limits of liability in civil actions against local governments, political corporations, and volunteer fire companies.

Under current law, injured patients must notify the state or other governmental body of a potential malpractice claim within 180-days if they were treated by physicians or other health care professionals at a health facility operated by a governmental body and medical malpractice results in injury or death to a family member. Privately run health systems are subject to a three-year statute of limitations for the same claims.

This unequal treatment is problematic in several respects. Obtaining medical records can be a burdensome process, which can create problems with the short time period allowed to file a claim. Also, most people do not know about the 180-day period for state-run facilities since no one is legally obligated to inform patients of the length of the statute of limitations, creating a trap for the unwary. Victims of medical malpractice should not be penalized by losing their right to proceed in court for failure to know about the notice requirement and comply within 180 days.

Wisconsin families should be afforded fair and equal protection under the law, regardless of which hospital or doctor they use.

The State Bar of Wisconsin strongly urges you to support SB 127.

*If you have any questions, please feel free to contact Adam Korbitz at (608) 250-6140, Government Relations Coordinator for the State Bar of Wisconsin.*

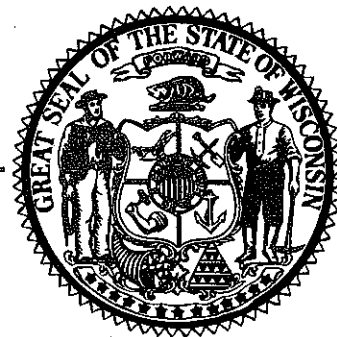
### State Bar of Wisconsin

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**FRED A. RISSE**  
**President**  
**Wisconsin State Senate**

August 18, 2009



Senator Lena Taylor, Chair  
Senate Committee on Judiciary, Corrections,  
Insurance, Campaign Finance Reform, and Housing  
415 South, State Capitol  
HAND DELIVERED

Dear Senator Taylor,

Thank you for scheduling a public hearing on 2009 Senate Bill 127. I am sorry that I am unable to appear in person.

Senate Bill 127 will apply the same 3-year statute of limitations for medical malpractice cases for privately run health care facilities to government run health care entities, such as the UW Hospital and Clinics.

I have introduced this legislation for several sessions because Wisconsin families should be afforded fair and equal protection under the law, regardless of which hospital they use.

Under current law, injured patients and their families must notify the state or other governmental body of a potential medical malpractice claim within 180-days of the date of the injury or death if they were treated at a health facility operated by a governmental body (such as UW Hospital & Clinics or UW Health/Physicians Plus). Injured patients and their families generally have a 3-year statute of limitations for the same claims if the hospital is a private facility.

The current law creates problems in many cases. A vast majority of patients are unaware they must notify the governmental body of a claim within 180 days since no one is legally obligated to inform them of this notice of claim requirement. Further, even though something may not appear right, an expert reviewing the medical records is often consulted before a medical malpractice claim is filed. It can take months for patients to receive their medical records, which creates problems with the short time period allowed to file a claim.

There is no rational justification for this difference. The 180 day limit is unreasonably short. Many families may not have even recovered from the tragic loss caused by a medical mistake within the limited time period, much less having reviewed the possibility of initiating legal action.

Wisconsin families who choose UW Hospital & Clinics or UW Health/Physicians Plus should not be treated differently than families who choose privately operated health systems.

Senate Bill 127 will provide equity for all patients involved in malpractice situations. I would urge the committee act favorably on this bill in an effort to provide a level playing field for all Wisconsin residents, regardless of who employs their physician.

Thank you again for your consideration of this legislation. Please feel free to contact me if you should have any questions.

Most sincerely,

A handwritten signature in black ink, appearing to read "Fred A. Risser", is written over a circular stamp.

FRED A. RISSE  
President, Wisconsin State Senate

FAR:skb  
CC: Members of Committee